



DEPARTMENT OF DEFENSE

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Office of the Secretary

[Docket ID: DoD-2012-OS-0029]

32 CFR Part 319

Privacy Act; Implementation

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Defense Intelligence Agency (DIA) is adding a new exemption rule for LDIA 0010, entitled "Information Requests-Freedom of Information Act (FOIA) and Privacy Act" to exempt those records that have been previously claimed for the records in another Privacy Act system of records. To the extent that copies of exempt records from those other systems of records are entered into these case records, DIA hereby claims the same exemptions for the records as claimed in the original primary system of records of which they are a part. This direct final rule makes nonsubstantive changes to the Defense Intelligence Agency Program rules. This will improve the efficiency and effectiveness of DoD's program by allowing those records that are only exempt from pertinent provisions of law, to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record, to still pertain to the record which is now contained in this system of records. This rule is being published as a direct final rule as the Department of Defense does not

expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule is effective on [INSERT DATE 70 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER] unless comments are received that would result in a contrary determination. Comments will be accepted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]. If DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the Federal Register.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- * Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- * Mail: Federal Docket management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from

members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231-1193.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will publish a withdrawal of this direct final rule in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of

this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review".

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 319.

Privacy.

Accordingly, 32 CFR part 319 amended as follows:

PART 319 - DEFENSE INTELLIGENCE AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR part 319 continues to read as follows:

Authority: Pub. L. 93-579, 5 U.S.C. 552a (f) and (k).

2. Section 319.13 is amended by adding paragraph (j) to read as follows:

§ 319.13 Specific exemptions.

* * * * *

(j) *System identifier and name:* LDIA 0010, Information Requests-Freedom of Information Act (FOIA) and Privacy Act.

(1) *Exemption:* During the course of information requests-FOIA and Privacy Act actions, exempt records/material from other systems of records may become part of this system of records. For such records/material, DIA hereby claims the same exemptions as is claimed for the systems from which such records/material are derived.

(2) *Authority:* 5 U.S.C. 552a (k)(2) through (k)(7).

(3) *Reasons:* Records in a system of records are only exempted from pertinent provisions of 5 U.S.C. 552a to the extent such provisions are identified and an exemption claimed. In general, exemptions claimed protect properly classified information relating to national defense and foreign policy; avoid interference during the conduct of criminal, civil, or administrative actions or investigations; ensure protective services provided the President and others are not compromised; protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; preserve the confidentiality and integrity of Federal testing materials; and safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule(s)

for the systems of records from which the records/materials was derived will identify the specific reasons why the records/materials are exempt from provisions of 5 U.S.C. 552a.

DATED: February 28, 2012.

PATRICIA L. TOPPINGS

OSD Federal Register Liaison Officer

Department of Defense

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